UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,434	09/10/2001	Peter Sauerbrei	49658-0512	1649

7590 06/28/2005

Moser Patterson & Sheridan
3040 Post Oak Boulevard
Suite 1500
Houston, TX 77056-6582

EXAMINER	
CHUNG, DANIEL J	
ART UNIT	**PAPER NUMBER**
2677	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/955,434	SAUERBREI, PETER	
	Examiner	Art Unit	
	Daniel J. Chung	2672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 April 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-6,8-32,34-37,39-55 and 57* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-6,8-32,34-37,39-55 and 57* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 1, 3-6, 8-32, 34-37, 39-55 and 57 are presented for examination. This office action is in response to the RCE filed on 4-8-2005 and applicant's response filed on 3-9-2005.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4-8-2005 has been entered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-6, 8-32, 34-37, 39-55 and 57 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,4 and 9 of U.S. Patent No.6,323,879. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims in U.S. Patent Number 6,323,879 encompass the limitations of recited claims of the instant application. Omission of element and its function from the patent claims would have been obvious if the functions or the elements are not desired (See MPEP 2144.04(II)A). It is well settled that the omission of an element and its function in combination is obvious expedient if remaining elements perform same functions as before. In re KARLSON (CCPA) 136 USPQ 184 (1963). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,3-6,8-32,34-37,39-55 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asente (6,310,622) in view of Takakura et al (5,509,113).

Regarding claim 1, Asente discloses that the claimed feature of a method for determining the spacing of objects, (See Abstract, Fig 1-4, col 1 line 39-col 3 line 5) the method comprising the steps of: receiving [102] dimension data that defines a constraint [i.e. "path"; 301,401] (See col 3 line 44-45); receiving [106] a set of supplied spacing parameter values ["spacing parameter"; 208,209] that indicate how to space objects [i.e. "selected graphical element"; 201] relative to constraint (See Fig 2 col 3 line 53-55, col 4 line 21-23); and selecting a grid type from a plurality of grid types, wherein the grid type is associated with a set of gird parameters; generating grid parameter values [i.e. "location/position value of placement points"] based on the supplied spacing parameter values ["spacing parameter"] and the dimension data, wherein the generated grid parameter values are associated with a subset of the set of grid parameters; generating a set of points [i.e. "placement points"] based on the generated grid parameter values and the supplied spacing parameter values; and mapping the set of points ["placement points"] to the defined constraint ["selected path"] to establish locations of the objects ["graphical element"] relative to constraint. (See Fig 1, Fig 3, Fig 4, col 3 line 40-col 4 line 5)

Asente does not specifically discloses that "selecting a grid type from a plurality of grid types, wherein the grid type is associated with one or more gird parameters" and "generating grid parameter values based on the spacing parameter", [i.e. relationship between the selected gird and the constraint] as recited in claim. However, such limitations are shown in the teaching of Takakura et al. [i.e. "a black circle ['grid' in

recited claim] is drawn automatically on every connective point of the figure parts (intermediate point pi) ['set of points']. The diameter ['grid parameter'] of the black circle is identical in a diameter with the width ['spacing parameter'] of "white and black pattern railroad" ['object, 'constraint']"] (See col 6 line 45-49, Fig 2-3, Fig 5, col 6 line 15-31, col 7 line 27-52) It would have been obvious to one skilled in the art to incorporate the teaching of Takakura et al into the teaching of Asente, in order to assist the user in the placement of object/elements with easy manner, as such improvement is also advantageously desirable in the teaching of Asente for producing graphically pleasing graphical pattern along a border or other shape with user friendly manner.

Regarding claims 3-6, refer to the discussion for the claim 1 hereinabove, Takakura et al further discloses that selecting the grid type based on the set of received spacing parameter values, the defined constraint, the user input that specifies a particular type of grid that is to be used, the set of spacing parameter values and the defined constraint. (See col 6 line 45-49, Fig 2-3, Fig 5, col 6 line 15-31, col 7 line 27-52)

Regarding claim 8, Asente discloses that the step of receiving input that specifies one or more attributes of constraint, wherein one or more attributes are associated with one or more bounds of one or more dimensions of constraint. (See Fig 1, Fig 2)

Regarding claim 9, Asente discloses that defines a constraint includes the step of receiving data that defines a one dimensional constraint. (See Fig 3, Fig 4)

Regarding claims 10-15, Asente discloses that defines [102] a constraint includes the step of receiving data that defines a multi-dimensional, a spline, a sphere, a cylinder, a rectangle or a line segment constraint. (See Fig 1-4)

Regarding claim 16-24, refer to the discussion for the claim 1 hereinabove, Takakura et al further discloses that the step of selecting a grid type includes the step of selecting a two dimensional/three-dimensional/ rectangular/ polar/ hex/ triangular mesh/ spherical/ random/ scattered grid type. [i.e. "circle", "rectangle"] (See col 6 line 45-49, Fig 2-3, Fig 5, col 6 line 15-31, col 7 line 27-52)

Regarding claim 25, Asente et al discloses that the step of receiving a set of object information, wherein the set of object information identifies a particular object to be placed on the constraint at locations based on generated set of points. (See Fig 1-4)

Regarding claim 26, refer to the discussion for the claim 1 hereinabove, Takakura et al further discloses that the step of generating the set of grid points includes the steps of generating the set of grid points based on the set of object information. (See col 6 line 45-49, Fig 2-3, Fig 5, col 6 line 15-31, col 7 line 27-52)

Regarding claim 27, Asente discloses that the set of object information identifies a bounding box that is associated with the particular object; and the step of generating the set of grid points based on the set of object information comprises the step of generating the set of grid points based the bounding box. (See Fig 1-4)

Regarding claim 28, refer to the discussion for the claim 1 hereinabove, Takakura et al further discloses that the step of mapping a grid of selected grid type onto constraint includes the step of determining one or more locations to place objects on constraint by identifying one or more areas of grid that intersect constraint. (See col 6 line 45-49, Fig 2-3, Fig 5, col 6 line 15-31, col 7 line 27-52)

Regarding claim 29, Asente discloses that receiving pivot point information, wherein the pivot point information specifies pivot points for the placement of objects relative to the generated set of points; and placing objects on constraint such that the pivot points of objects coincide with one ore more locations. (See Fig 1-4)

Regarding claim 30, Asente discloses that identifying a particular object; generating a copy of particular object; and placing the copy of particular object at one or more of one or more locations. (See Fig 1-4)

Regarding claim 31, Asente discloses that identifying a particular object; generating an instance of particular object; and placing the instance of particular object at one or more of one or more locations. (See Fig 1-4)

Regarding claims 32 and 39-40, claims 32 and 39-40 are similar in scope to the claims 1 and 8-9, and thus the rejections to claims 1 and 8-9 hereinabove are also applicable to claims 32 and 39-40.

Regarding claims 34-37 and 48-54, claims 34-37 and 48-54 are similar in scope to the claims 3-6 and 25-31, and thus the rejections to claims 3-6 and 25-31 hereinabove are also applicable to claims 34-37 and 48-54.

Regarding claims 41-47, claims 41-47 are similar in scope to the claims 10-24, and thus the rejections to claims 10-24 hereinabove are also applicable to claims 41-47.

Regarding claims 55 and 57, claims 55 and 57 are similar in scope to the claim 1, and thus the rejections to claim 1 hereinabove is also applicable to claims 55 and 57.

Response to Arguments/Amendments

Applicant's arguments filed 3-9-2005 have been fully considered but they are not persuasive. Specifically, Applicant argued that the cited references (Ascente, Crawford,

Kumar) do not discloses a relationship between the selected grid and the constraint. (See Remarks p. 14 line 16-20) However, the recited claims were rejected under 35 U.S.C 103(a) over Asente in view of Takakura et al in previous Office Action, which mailed on 1-10-2005. Therefore, applicant's arguments are moot, as Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. Also, the newly submitted reference (Takakura et al) discloses the feature upon which applicant relies [i.e. a relationship between the selected grid and the constraint], as Takakura shows that "a black circle ['grid' in recited claim] is drawn automatically on every connective point of the figure parts (intermediate point pi) ['set of points']. The diameter ['grid parameter'] of the black circle is identical in a diameter with the width ['spacing parameter'] of "white and black pattern railroad" ['object', 'constraint'] " (See col 6 line 45-49, Fig 2-3, Fig 5, col 6 line 15-31, col 7 line 27-52) See the rejection hereinabove.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Chung whose telephone number is (571) 272-7657. He can normally be reached Monday-Thursday and alternate Fridays from 7:30am- 5:00pm. If attempts to reach the examiner by

telephone are unsuccessful, the examiner's supervisor, Michael, Razavi, can be reached at (571) 272-7664.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

571-273-8300 (Central fax)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

djc
June 20, 2005

JEFFERY BRIER
PRIMARY EXAMINER